

NTSB Order No. EA-5182

The Board's Rules of Practice require that a notice of appeal from a law judge's decision in an emergency case must be filed within 2 days after the date on which the oral initial decision was rendered, and must be perfected by an appeal brief filed within 5 days after the date on which the notice of appeal was filed. 49 C.F.R. § 821.57(a). Therefore, respondent's notice of appeal, which according to the certificate of service

was filed on September 30, was timely.<sup>1</sup> However, he has not filed an appeal brief as required to perfect his appeal. His appeal brief was due to be filed no later than October 5 or October 6, depending on whether his notice of appeal is considered to have been filed on September 30 (the date on the certificate of service) or October 1 (the date of the postmark). As of the date of this order, no brief has been filed and no good cause has been provided.

Briefs in emergency proceedings must be filed and served by overnight delivery service or by facsimile confirmed by personal or first-class mail delivery of the original (49 C.F.R. § 821.57(b)). Neither the FAA nor the Board has received an appeal brief by overnight mail or facsimile. Therefore, even if respondent has served a brief by first-class mail that has not yet been received, it will be considered untimely. See Administrator v. Briggs, NTSB Order No. EA-4502 (1996), where a respondent in an emergency proceeding served his appeal brief by first-class mail alone and the Board gave notice that it would, "hereafter treat any brief whose receipt by us is delayed through lack of compliance with our rule on service as untimely and, absent good cause for the failure to comply, subject to dismissal on the motion of the other party or on the Board's own initiative."

Without good cause to excuse a failure to file a timely appeal brief, or a timely request to file one out of time, a party's appeal will be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988).

**ACCORDINGLY, IT IS ORDERED THAT:**

The respondent's appeal from the law judge's oral initial decision in this case is dismissed.

Ronald S. Battocchi  
General Counsel

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<sup>1</sup> The certificate of service states the notice of appeal was served on September 30, but the envelope in which it arrived was postmarked October 1. Our rules state that documents served by mail delivery are deemed filed on the date specified on the certificate of service, but that where the document bears a postmark that cannot reasonably be reconciled with the mailing date on the certificate of service, the document will be deemed filed on the date of the postmark. Regardless of whether September 30 or October 1 is considered the service date, respondent's notice of appeal was timely.